

Date: April 27, 2001

To: Nina Manzi
Joel Michael
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From: Kevin Mosher

Re: Federalism and Rule 508

I have completed researching the issue: whether the Office of Technology can require the state of Minnesota (or the Minnesota Legislature) to comply with Rule 36 C.F.R. Part 1194 (Section 508 of the Rehabilitation Act) by using federal funds as a basis for mandatory compliance.

I have attempted to contact Mr. Wakefield at the Access Board in regards to this issue, but all efforts have proved fruitless. Therefore, the following paragraphs are based on my understanding of these federal regulations and federalism implications. It is my view that Section 508 would not authorize the federal government to mandate state compliance with this section.

Specifically, Section 508 fails to include *states* within its wording. Instead, this section only refers to its impact on federal agencies. The only exception to this rule is in the area of education (i.e. through the Department of Education), which might force states to somewhat comply with Section 508 standards. However, outside this section there appear to be no federalism implications. *See generally* Summary Sheet Handout.

According to the Access Board, there appear to be no federalism implications with regard to Executive Order 13132. *See* Summary Sheet Handout and Executive Order 13132 (August 4, 1999). Therefore, through Section 508 the federal government has not pre-empted Minnesota law, nor has it that Minnesota enforce a mandatory regulation. However, I do not doubt that it would be within the power of the Office of Technology to mandate state compliance with Section 508, should federal grants be dependent upon its compliance. As it stands though, Section 508 is not applicable to states.

The question still remains whether the federal government has made federal grants contingent upon state compliance with Section 508. This wording would have to be within the grant itself since Section 508 does not speak to this possibility. If the Access Board said that states must comply with Section 508 because of grants they receive, the impetus must be on the Access Board to supply the states with specific information regarding these grants. Otherwise, without such information a reading and understanding of Section 508 would not mandate compliance.

Kevin Mosher